



Appeal Decision

Site visit made on 24 August 2022

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th August 2022

Appeal Ref: APP/X1545/W/21/3280489

Fieldview, Tolleshunt D'Arcy Road, Tolleshunt Major, Maldon CM9 8LN

- The appeal is made under section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
 - The appeal is made by John Meade and Janice Diane Snowling against the decision of Maldon District Council.
 - The application Ref MLA/MAL/20/1297, dated 11 December 2020, was refused by notice dated 5 May 2021.
 - The development proposed is described as 'application for a modification to Section 106 legal agreement executed under planning application FUL/MAL/07/00706.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the above description from the decision notice. The same description, but also including the planning application reference number and appeal site address (which are also shown above) is on the appeal form. I am therefore satisfied that no party would be prejudiced by my use of this description.
3. The planning permission concerned relates to a single dwelling. The associated planning obligation restricts the occupation thereof to a period no longer than three months at any one continuous time. The appeal scheme seeks to allow occupation for up to 11½ months at any one continuous time.

Main Issue

4. The main issue is whether the planning obligation still serves a useful purpose and whether that would continue to be the case once modified in the manner proposed, with specific regard to the Council's strategy for the location of new development and the retention of tourist uses.

Reasons

5. Policy S1 of the Local Plan¹ sets out the Council's commitment to sustainable development. Amongst other things, it identifies one of the key principles as minimising the need to travel and where it is necessary, prioritising such by sustainable means. Policy S8 responds by setting out the Council's settlement hierarchy. Which directs development to within the largest settlements, then to within larger villages, then within smaller villages and then others. Settlements are ranked in terms of their capacity, with specific regard to their

¹ Maldon District Approved Local Development Plan 2014-2029 (2017)

respective depth and breadth of service provision. Development outside of settlements, for this and other reasons, is restricted.

6. One potential exception to this is tourist uses commensurate with Policy E5, which also seeks to protect existing provision. As a holiday let (so because its occupancy is restricted to limited periods of time) the dwelling affected by the planning obligation supports the tourist industry for the district. It is not uncommon for such uses to be prevalent in the countryside and they may exist therefore in places where open market housing would not normally be allowed. This is usually due to the fact that, as other employment or commercial uses may, they contribute towards the continuing support for and thus sustaining of the district's rural economy, bringing a regular turnover of visitors to an area that an open market dwelling may not.
7. The restriction of the length of the occupation by the same person or persons as set out by the existing obligation therefore responds to the Council's strategy for new development and supports the rural economy. In regard to the main issue of the case, it thus serves a useful purpose. Particularly bearing in mind that the dwelling is not restricted by any planning conditions concerning its occupation.
8. Allowing the dwelling to be continuously occupied by the same person or persons for up to 11½ months would be in the region of two weeks shy of a calendar year. In essence, leaving in the region of 14 days out of 365 where its occupation would have to change. Whichever way it is sliced, this would be vastly disproportionate and would move the use of the dwelling to, as near as makes no difference, a permanent, almost unencumbered, open market one. The use could still operate as a holiday let and have a short-term turnover of occupants. However, there would be a greater likelihood of it being occupied continuously for the total 11½ months, with effectively a short break therefrom, when the same person or persons could then return. It could therefore conceivably operate as a conventional rented open market dwelling which would not have the same level of benefits to the district's rural economy.
9. The effect of this nature of occupation would not only undermine the Council's strategy for the location of new development, but also have negative implications for similarly restricted dwellings in the district, cumulatively reducing the district's tourist offer. The resulting development would thus be contrary to Policies S1, S8 and E5 of the Local Plan. The aims of which I have set out above. With this in mind, the planning obligation would cease to have a useful purpose if it were to be modified in the proposed manner.

Other Matters

10. Whilst there is some ambiguity as to precisely the extent thereof, the evidence suggests that the Council is currently undersupplied with housing sites against the five years required by the National Planning Policy Framework (the Framework). Since the upshot of the appeal scheme would be, very close to, an open market dwelling, I would be taken to the circumstances of paragraph 11 d) ii of the Framework and treat the most important policies as out of date.
11. As I have explained above, the modification to the obligation would give rise to harm associated with both the establishment of development in an otherwise unacceptable location and that it would detrimentally affect the district's tourism offer. This would conflict with the aims of the Framework. Specifically

in minimising the need to travel and supporting a prosperous rural economy. I afford these harms substantial weight.

12. The provision of the dwelling would be beneficial to any undersupply albeit would make a very limited contribution due to it only being one unit. A unit which already functions as a dwelling in terms of what social and economic advantages it would provide. Bearing in mind also that the potential cessation of a holiday let use has the potential for economic disadvantages. With this in mind, I would afford the benefits of the proposed development limited weight.
13. It is therefore sufficiently clear that, in an undersupply situation, the adverse impacts of modifying the planning obligation would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. The appeal scheme would not therefore be sustainable development for which the presumption in favour applies.
14. An 11½ month restriction may allow persons to occupy the dwelling in the same manner as currently, but it is more likely that this would be either less likely or cease to be the case altogether, acknowledging that the restriction would, for all intents and purpose, not actually be a restriction any longer. Also, I consider a period of three months to be generous for a holiday let use since most breaks would, generally, tend to be around a month as a maximum. There seems to be no compelling reason why the three month restriction is ineffective for the purposes it was conceived.
15. There is no corroborative evidence provided to suggest that the current restriction detrimentally affects the appellant's business. There is also no indication in the evidence that the appellant has responded to the other requirements of Policy E5 in regard to situations where the loss of existing tourist uses may be considered acceptable. An example of a development at Grovemere House apartments in Tolleshunt Major is cited and a planning application reference number given but I am unsure, without further information thereon, what relevance this has to the appeal scheme or the specific circumstances of the case.
16. There may be other dwellings locally that may offer longer occupation terms, but I am unaware of their circumstances. In any case, any that may be, for example, short term let through websites or similar agencies, may have historically been unencumbered by any restriction on their occupation and their existence would therefore have limited bearing on the circumstances of the case before me.

Conclusion

17. The existing planning obligation serves a useful purpose and would cease to do so should it be modified in the manner proposed. Additionally, such a modification would result in conflict with the development plan, for which there are no material considerations, including the Framework and worthy of sufficient weight, that would indicate a decision other than in accordance therewith. The appeal should therefore be dismissed.

John Morrison

INSPECTOR